

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES, *et al.*,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

No. 1:23-cv-00108-LMB-JFA

**MEMORANDUM IN SUPPORT OF GOOGLE LLC'S MOTION TO EXCLUDE
CERTAIN TESTIMONY OF ARNAUD CREPUT**

Defendant Google LLC (“Google”) moves this Court to exclude testimony of Arnaud Creput, CEO of ad tech competitor Equativ (which operates an ad server, ad exchange, and DSP), regarding Google’s compliance with its commitments to the French Competition Authority (“FCA”).¹

I. BACKGROUND

In 2021, Google entered into a settlement with the FCA to resolve the FCA’s regulatory investigation into Google’s ad tech business.² As part of that settlement, Google made certain behavioral commitments to the FCA.³ The FCA incorporated those commitments into its June 7, 2021, decision and made them mandatory and binding for a period of three years.⁴ The FCA appointed an independent trustee to monitor Google’s implementation of these commitments and submit quarterly reports to the FCA on Google’s progress.

During remedies discovery, Plaintiffs sought discovery related to Google’s compliance with the FCA Commitments, including the reports of the monitoring trustee. Google informed Plaintiffs of its concern that producing materials related to its compliance with the FCA

¹ Google has good cause for moving to exclude Mr. Creput’s testimony on this topic after the deadline for August 29, 2025 deadline for *motions in limine*. See Dkt. 1560 at 3. Prior to Plaintiffs’ counsel’s statements during trial on September 24, 2025, see *infra* at 2, Google had no notice that Mr. Creput planned to testify about Google’s compliance with its commitments to the FCA.

² See *The Autorité de la Concurrence Hands Out a €220 Millions Fine to Google for Favouring Its Own Services in the Online Advertising Sector*, Autorité de la Concurrence (June 7, 2021), <https://tinyurl.com/5fvzfvnd>.

³ Commitments offered by Google under Article L.464-2, III of the French Commercial Code, Cases No. 19/0030 F, 19/0056 F and 19/0057 F (February 15, 2021), <https://tinyurl.com/4b993bxc> (“FCA Commitments”).

⁴ Decision 21-D-11 of June 07, 2021 regarding practices implemented in the online advertising sector, Autorité de la Concurrence, <https://tinyurl.com/mr48yxzz>, at 101 (Article 3).

Commitments would risk violating French competition and discovery laws.⁵ On June 12, Plaintiffs represented to Google that they had communicated with the FCA and that they would provide a letter the following week from the FCA stating that Google's production of these materials would not violate French law. Ex. A at 1-3. Google agreed to produce the final, non-confidential monitoring trustee reports (redacted for third-party information), as well as certain materials that Google had provided to the trustee, once Plaintiffs provided the letter from the FCA. Ex. A at 1. Plaintiffs never provided any letter from the FCA or otherwise responded to Google's offer.

On September 24, 2025, the Court asked whether there was "a history where Google was previously enjoined as a result of some antitrust litigation and then violated the injunction." 9/24/2025 AM Trial Tr. 70:11-13. In response, counsel for Plaintiffs stated that "in France, there was behavioral remedies implemented related to ad technology products," and that "Mr. Creput, the executive from Equativ," would "address that issue" in terms of "how Google was able to circumvent that remedy to continue to harm competition in France." 9/24/2025 AM Trial Tr. 70:18-25.

II. ARGUMENT

Having neglected to provide Google with a letter from French authorities that would allow Google to produce evidence of its compliance with the FCA Commitments, Plaintiffs should not now be permitted to offer the testimony of a competitor with no connection to the FCA's oversight process as evidence that Google has "circumvented" its commitments to the FCA.

In addition, Mr. Creput's testimony about Google's compliance could only consist of

⁵ In particular, the French Blocking Statute prohibits collection of "evidence for the purpose of or in connection with foreign judicial or administrative proceedings," Article 1 bis, and breach of that provision may be a criminal offense. Article 3.

impermissible hearsay under Rule 802, and should be excluded under Rule 403 because any minimal probative value would be substantially outweighed by the unfair prejudice in light of Google's inability to introduce documents showing its compliance. It would likewise risk confusing the issues and wasting time when the FCA – a different authority in a different jurisdiction overseeing a different remedy – has not made any finding that Google has ever failed to comply.

III. CONCLUSION

For the foregoing reasons, this Court should exclude testimony from Arnaud Creput regarding Google's compliance with its commitments to the FCA.

Dated: September 28, 2025

Eric Mahr (*pro hac vice*)
Andrew Ewalt (*pro hac vice*)
Tyler Garrett (VSB # 94759)
FRESHFIELDS US LLP
700 13th Street, NW, 10th Floor
Washington, DC 20005
Telephone: (202) 777-4500
Facsimile: (202) 777-4555
eric.mahr@freshfields.com

Justina K. Sessions (*pro hac vice*)
FRESHFIELDS US LLP
855 Main Street
Redwood City, CA 94063
Telephone: (650) 618-9250
Fax: (650) 461-8276
justina.sessions@freshfields.com

Daniel Bitton (*pro hac vice*)
AXINN, VELTROP & HARKRIDER
LLP
55 2nd Street
San Francisco, CA 94105
Telephone: (415) 490-2000
Facsimile: (415) 490-2001
dbitton@axinn.com

Bradley Justus (VSB # 80533)
AXINN, VELTROP & HARKRIDER
LLP
1901 L Street, NW
Washington, DC 20036
Telephone: (202) 912-4700
Facsimile: (202) 912-4701
bjustus@axinn.com

Counsel for Defendant Google LLC

Respectfully submitted,

/s/ Craig C. Reilly
Craig C. Reilly (VSB # 20942)
THE LAW OFFICE OF
CRAIG C. REILLY, ESQ
209 Madison Street, Suite 501
Alexandria, VA 22314
Telephone: (703) 549-5354
Facsimile: (703) 549-5355
craig.reilly@ccreillylaw.com

Karen L. Dunn (*pro hac vice*)
Jeannie S. Rhee (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Jessica E. Phillips (*pro hac vice*)
Martha L. Goodman (*pro hac vice*)
Amy J. Mauser (*pro hac vice*)
Erica Spevack (*pro hac vice*)
Bryon P. Becker (VSB #93384)
DUNN ISAACSON RHEE LLP
401 Ninth Street, NW
Washington, DC 20004-2637
Telephone: (202) 240-2900
kdunn@dirllp.com